



# Are Your Grading Policies Legally Sound?

How to avoid court entanglements when  
student grades are challenged

BY LAURA J. LINK AND KENT D. KAUFFMAN

**V**irtual learning has given parents a much closer look into the classroom. Parents in many school communities over the past year have had direct, online access into their child's day-to-day learning with the chance to monitor teachers' lessons and to provide home support with assignments.


During the COVID-19 pandemic, parents have been able to observe instruction first-hand, in real time or asynchronously, and to see how and when assessments are administered to students. The unprecedented parental access has been an essential bridge for many children who have struggled with remote learning.

While often helpful, such access also enables parents to encounter what's *not* happening in

the classroom. Parents have front-row seats into assignments that may lack clear communication or criteria for success, assignments given without teacher feedback to correct learning errors, assessments not aligned to instruction — and grades continuing to be allocated, nonetheless. Dissatisfied and more informed, parents are better equipped to challenge their child's grades.

That's been the experience for one of us (Laura). As a parent of a student learning virtually, I did not need a parent-teacher conference to figure out why my daughter had failing grades in her AP Government course. Instead, her direct course log-in provided sufficient evidence.

Online, my daughter received assignments without teacher lessons or directions. I found



projects assigned with no rubrics and activities that required materials that students couldn't access at home. One class announcement revealed a test retake opportunity but only for those students with two or fewer absences. Even then, eligible students should expect 15 points off their grade, per school policy. According to the principal, this automatic point reduction is exacted out of fairness to those students who took the test just once.

Unsatisfied with this rationale and what I had observed online, I challenged the accuracy of my daughter's final course grade beyond the school level — and won.

### Increasing Challenges

This scenario is not unique. For many students and their parents, grades are currency. The higher the grades, the greater a student's academic net worth. High grades allow students to gain acceptance into courses, programs and colleges of their choice. As a result, students and parents have been closely monitoring grades. When dissatisfied with grading decisions, increasing numbers of parents have begun to legally challenge school grading policies and practices in the courts. Now more than ever, to meet these challenges and avoid costly and burdensome legal entanglements, school district leaders ought to ensure their grading policies meet legal standards.

Toward this end, we offer five guidelines derived from relevant court rulings to help school leaders establish grading policies and practices that not only are legally sound but also equitable and meaningful.

#### ► Develop and implement grading policies that are fundamentally fair.

Courts expect schools to ensure that students receive a *fair* grade. What constitutes fair becomes problematic when there are few or no grading policies in place. To make decisions, courts first look to the school district's grading policy, seeking to determine if policy enforcement is appropriate to the challenge brought forward.

In the *Lane v. Belgrade* (2007) case, two siblings attending Capital High School in Helena, Mont., transferred in state to a new school district, Belgrade, for their senior year. At Capital HS, the siblings had high grade point averages and class ranks, but Belgrade's grading formula adjusted the students' GPAs downward, leading to their parents filing a lawsuit in state court. With no written policy in place, Belgrade was ordered by the court to reverse its actions so the siblings could graduate with their original GPAs.

While having a written grading policy is important, simply having one doesn't guarantee courts will side with school districts. In fact, the recent trend signals that courts are more willing to rule on cases with less deference to the policies of school officials, especially when policies are deemed unfairly applied.

An often-cited example is the case of *Hornstine v. Township of Moorestown* (2003), where a special education student in Moorestown, N.J., with an individualized education plan was identified as the valedictorian. After complaints from other students' families and others in the community that the IEP provided a statistical advantage, the superintendent and school board enacted a retroactive policy amendment allowing multiple valedictorians. The parents of the student in special education sued. In its decision, the federal court ruled that the retroactive policy was fundamentally unfair and the GPA of a student in special education was not less than students without IEPs. The court declared the student in special education as the sole valedictorian.

#### ► Remove disciplinary sanctions from students' academic grades.

Fairness issues arise with particular force when they include conflating students' behavior with their academic grades. The courts have been clear that grade reductions for disciplinary reasons result in the misrepresentation of a student's academic achievement. Courts also historically have sided with students when educators have reduced students' grades as a result of behavioral infractions.

In *Smith v. School City of Hobart* (1993), a federal judge ruled that grade reductions for disciplinary reasons (consuming alcohol off-campus) resulted in a "clear misrepresentation of the student's scholastic achievement for college entrance and other purposes." The judge ruled in favor of the Hobart, Ind., student and ordered the high school to fully count course work missed but made up during the suspension period.

More recently, in *John S. v. Ozark R-VI School District* (2012), a federal court ruled that reducing a suspended student's credit for assignments completed during his suspension was unlawful and ordered Ozark High School in Missouri to give the student full credit for his work. The court noted that academic grades should communicate evidence of student achievement and nothing else.

With this, existing grading practices that disallow makeup work during a suspension period or reduce points for work turned in late or discount points for negative student behaviors in class are





Laura Link (second from left) believes past court rulings on school grading policies and practices can help educators skirt legal entanglements.

not supported by the courts. Instead, educators are advised to find other means to solve behavioral issues than in the gradebook.

► **Separate nonacademic factors from students' academic achievement.**

Courts have relied on grade accuracy to mean *the extent that it permits someone to estimate the extent of a student's knowledge and skills in a given area*. According to this definition, including nonacademic factors such as effort, attendance, work completion, etc., may not be legally defensible.

In *State ex rel. Barno v. Crestwood Board of Education* (1998), a senior at Maplewood Area Joint Vocational School in Ravenna, Ohio, was denied graduation because she didn't attend school at least 93 percent of the time, even with a 3.9 GPA. In ruling for the student, the state court found the school's attendance policy unreasonable and inaccurate because the policy made attendance a prerequisite for credit, something the court viewed as "tantamount to making attendance a part of the curriculum."

In a more recent case in *Wilson v. Dallas Independent School District* (2012), the Texas Court of Appeals affirmed the restoration of a student's passing grade after his teacher changed it from passing to failing because of the stu-

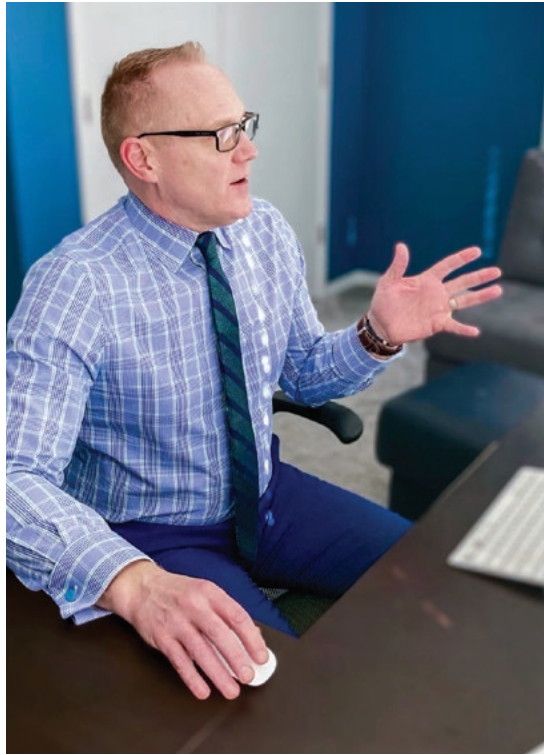
dent's poor class attendance and lack of effort on assignments.

According to various courts, misrepresentation of achievement is improper and illegal if the grading is done for reasons that are irrelevant to the achievement being assessed. This is supported in cases where downgrading (reduction of points) or upgrading (enhancement of points) due to non-academic factors has been directly challenged.

Both downgrading and upgrading can significantly influence grades. For instance, if a combination of behavioral factors (such as effort, attendance or conduct) count toward 20 percent of the final grade, students who are perceived as not meeting behavioral expectations could drop from a grade of C to an F. Conversely, students who are credited with maximum behavioral points could move up from a grade of C to an A.

To compound the issue, teachers, even those who teach at the same grade level in the same school, vary widely in the number and combination of evidence sources they may include in that 20 percent. This grading variation opens the door for students and their parents to question and legally challenge which choice and combination of evidence is the most fair, accurate and equitable.

► **Know your own grading policies and practices.** Grading variation occurs because most teachers



School law authority Kent Kauffman writes that grades ought not be used to resolve behavioral issues in classrooms.

grade in isolation and are left to make grading decisions using their own professional judgment. School leaders rarely intervene in teachers' grading practices because they often are unaware of the problems. They may not know about the varying evidence teachers use to assign grades or that grade reductions for disciplinary reasons regularly occur.

Also, school leaders may not realize how grading policies apply to transfer students or how grading policies affect students' GPAs and class rank. Yet being unaware leaves students vulnerable to downgrading and other grading-related issues. It also puts school leaders themselves at risk because they usually are named in lawsuits.

Such was the case in *Edinburg Consolidated Independent School District v. Smith* (2016), where a high school counselor in Edinburg, Texas, encouraged students to take a course he believed qualified as a weighted course. After completing the course, students were notified they wouldn't receive the weighted status. School leaders didn't realize the students were misguided. Regardless, the district claimed it couldn't give the students weighted credit, even with a counseling mistake, because policy supersedes counselor knowledge. The parents sued, and the court suspended class

rank, causing upheaval for seniors seeking college acceptance. Ultimately, the courts upheld the district's policy but directed school leaders to improve their grading policy knowledge and communication with students and their parents.

► **Provide students with appropriate due process.**

In *Goss v. Lopez* (1975), the U.S. Supreme Court made it possible for students and their parents to win grading challenges. In this case, a student at Columbus Central High School in Ohio was suspended without a hearing after being accused of destroying school property during what was perceived as a Vietnam War protest. In its ruling, the Supreme Court found that when actions of school officials affect students' liberty or property rights, schools must provide due process.

Due process in grading requires that grading policies be accurately communicated to students and their parents in advance, that a grievance procedure for grades be in place and conducted fairly and consistently, and that grading policies are reasonable and have a valid academic focus.

Since the *Goss* ruling, courts quickly and intentionally protected students' due process rights, including protections against unfair or inaccurate grading policies and practices.

### A Sound Approach

By understanding the impact that court decisions have had on school grading policies and practices, school leaders will save potential legal expenses and avoid the entanglements that come with parent-school conflict, as illustrated in the opening scenario. In the end, I (Laura) was relieved that my daughter passed her AP Government course. Yet getting there was a hardship, including lots of time, energy and resources, for all involved — the teacher, counselor, principal, district administrators, our family and especially my daughter. Her relationship with her AP Government teacher became tense and measured, causing added stress at home and school, and we both remain less trusting of the school's "student-centered" claims.

Such a scenario can be avoided. By using the five guidelines outlined here, school leaders can take decisive action to help all educators ensure their grading policies and practices are not only legally sound but also fair, accurate, equitable and meaningful for students. ■

**LAURA LINK** is associate dean of the College of Public Service at the University of Houston Downtown in Houston, Texas, and contributor to *What We Know About Grading*. E-mail: linkl@uhd.edu. Twitter: @laurajlink.  
**KENT KAUFFMAN** is associate professor of law at Purdue University-Fort Wayne in Fort Wayne, Ind.